NORTH DAKOTA DEFINED CONTRIBUTION RETIREMENT PLAN

Plan Document

Amended and Restated Effective July 18, 2003

ADOPTION RESOLUTION

Resolved, that effective July 18, 2002, the State of North Dakota has adopted the attached amended and restated Defined Contribution Retirement Plan. The Plan is a profit sharing plan that is intended to satisfy the requirements of Sections 401 and 501 of the Internal Revenue Code of 1986, as amended, and its associated regulations.

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ARTICLE 1.

DEFINITIONS

The following words and phrases shall, when used in this Plan, have the following meanings unless the context clearly indicates otherwise.

1.1 "Account balance" means the total contributions made by the employee, vested employer contributions, any transferred amounts under Section 3.4 and any investment gains or losses.

1.2 "Administrator" means any entity or individual designated by the Board to provide contractual administrative services to the Plan.

1.3 "Beneficiary" means any person designated by a participating member to receive a benefit provided by this Plan after the death of the member.

1.4 "Board" means the public employees retirement system board.

1.5 "Code" means the federal Internal Revenue Code of 1986, as amended from time to time, and as interpreted by applicable regulations and rulings.

1.6 "Deferred member" means a vested member of the public employees retirement system who has not elected to receive a refund and is eligible to receive deferred vested retirement benefits under the system.

1.7 "Effective date" means January 1, 2000.

1.8 "Eligible employee" means a permanent state employee who is eighteen years or more of age and who is in a position not classified by the central personnel division. "Eligible employee" does not include an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board.

1.9 "Employee" means any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by the governmental unit, or paid by the federal government through any of its executive or administrative officials.

1.10 "Employer" means the State of North Dakota.

1.11 "Participating member" or "participant" means an eligible employee who elects to participate in the North Dakota Defined Contribution Retirement Plan. For purposes of investment and payment of benefits under the Plan, the terms "participating member" or "participant" also includes individuals who have separated from employment with the Employer and beneficiaries, but who have retained benefit rights under the Plan.

1.12 "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.

1.13 "Plan" means the North Dakota Defined Contribution Retirement Plan, as stated herein, and as amended from time to time. This Plan shall be a profit sharing plan.

1.14 "Plan Year" means a twelve consecutive month period beginning any July 1 and ending the following June 30, with a short initial Plan Year beginning January 1, 2000 and ending June 30, 2000.

1.15 “Profit Sharing Contribution” means a discretionary contribution to the Plan made by the Employer. Profit Sharing Contributions under this Plan shall be made in accordance with Section 3.2, subsection b. and without regard to whether the Employer earns any profits.

1.16 “Public employees retirement system” or “system” means the defined benefit retirement plans established under North Dakota Century Code Chapter 54-52.

1.17 “Required Beginning Date” means April 1 of the calendar year following the later of the calendar year in which the member retires or reaches age seventy and one-half.

1.18 “Service” means periods of active employment with the employer, determined in the same fashion as service and prior service under North Dakota Century Code §§ 54-52-11 and 54-52-17.

1.19 “Trust Fund” means the assets of the Plan held in trust by the trustee.

1.20 "Trustee" means the public employees retirement system board, which shall serve as the Board of Trustees for this Plan.

1.21 “Wages” and “salaries” means earnings in eligible employment under this Plan reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under Code Sections 125, 401(k), 403(b), 414(h) or 457. “Salary” does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workers’ compensation benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer. Bonuses may be considered as salary under this Section if reported and annualized pursuant to rules adopted by the Board.

Notwithstanding any other provision of the law, the amount of wages or salary used to determine the retirement benefits of a participating member in this Plan must not exceed the amount of compensation permitted to be taken into account under Code Section 401(a)(17).

ARTICLE 2.

PARTICIPATION

2.1 **Eligibility.** Every eligible employee is eligible for membership under this Plan at the later of the first day of employment or the effective date of this Plan. Such eligibility, however, shall terminate at any time employment with the employer is terminated.

2.2 **Election to participate.** In order to participate in this Plan, a member must make a valid election pursuant to Chapter 54-52.6 of the North Dakota Century Code and the rules and policies of the Board.

2.3 **Participation in other plans.** A participating member may not participate in any other public sector retirement benefits plan for simultaneous services rendered to the same public sector employer. However, this Section does not prohibit a participant from participating in a retirement plan established by this state or other public sector employer under the Code.

ARTICLE 3.

CONTRIBUTIONS

3.1 **Mandatory employee contributions.** Each participating member shall contribute monthly four percent of the monthly salary or wage paid to such participant, and this assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of participation in this Plan.

3.2 **Employer contributions.**

a. Each employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. If the employee's contribution is paid by the employer under Section 3.3, the employer shall contribute, in addition, an amount equal to the required employee contributions. The employer shall pay such contribution monthly into the participating member's account from funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.

b. Each employer, at its sole discretion, may elect to make a profit sharing contribution to the Plan. The profit sharing contribution shall be allocated among all or any part of the participating members of the Plan for such plan year in proportion to the salary or wage of the participating member. For purposes of this Section 3.2, subsection b. only, participating members include only those individuals who are eligible employees on the date the profit sharing contribution is declared by the employer. Each participating member's share of the profit sharing contribution will be allocated to his or her account balance. Profit sharing contributions shall be subject to the rules regarding vesting of employer contributions as set forth in Section 4.2.

3.3 **Employer pick up of employee contributions.** Each employer, at its option, may pay the employee contributions required by Section 3.1, in accordance with Code Section 414(h), for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. Employee contributions paid by the employer must be treated as employer contributions in determining tax treatment under state tax law and the federal Code. Such contributions may not be included as gross income of the employee in determining tax treatment until they are distributed or made available. The employer shall pay these employee contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases. The option chosen may not be revoked for the remainder of the biennium. Thereafter, the option choice must be forwarded to the Board in writing by June fifteenth of each odd-numbered year.

3.4 **Transfer of contributions.**

a. For an individual who elects to terminate membership in the public employees retirement system and become a participating member in this Plan, the Board shall transfer a lump sum amount from the retirement fund to the participating member's account under this Plan. However, if the individual terminates employment prior to receiving the lump sum transfer under this Section, the election made under Section 2.2 is ineffective and the member remains a member of the public employees retirement system and retains all rights and benefits under that plan.

b. The Board shall calculate the amount to be transferred for employees electing to transfer in accordance with North Dakota Century Code Section 54-52.6-03.

For purposes of this Section 3.4 b., the term "actuarial present value of the individual's accumulated benefit obligation" means the present value of the individual's accrued benefit based on an interest rate of 8%, the 1983 Group Annuity Mortality Table weighted 71% male and 29% female, and any relevant market value adjustment and other procedures adopted and consistently applied to all participating members by the Board.

3.5 **Employee after-tax contributions.** This Plan does not allow voluntary after-tax employee contributions, except as may be attributable to transferred contributions under Section 3.4.

3.6 **Rollover contributions from other eligible plans**.

a. Subject to limitations and conditions adopted by the Board and in accordance with North Dakota Century Code Section 54-52.6-09.1, a Participant may make and the Plan will accept a direct rollover or regular rollover of an Eligible Rollover Distribution from an Eligible Retirement Plan as such terms are defined in §7.7 and as permitted by §408(d)(3) of the Code.

b. Upon receipt of a rollover contribution, the Board shall credit the amount of any rollover contribution to the contributing Participant's Account in the Plan and shall invest such amount in accordance with the provisions of this Plan.

c. The Participant shall establish to the satisfaction of the Board that the amount tendered as a rollover contribution represents a qualified distribution of the Participant from an Eligible Retirement Plan maintained by the former employer(s) of the Participant. The Board shall have the authority to determine whether or not a contribution proposed by a Participant constitutes a rollover contribution eligible for rollover treatment in accordance with this Section 3.6 and Code Section 402. In making such determination, the Board may require reasonable proof of demonstration by the Participant of the eligibility of the proposed contribution for rollover treatment.

d. The Board shall maintain the rollover contributions for each Participant in a separate rollover account that will consist solely of the rollover contributions made by the Participant, plus any adjustments for investment gains or losses.

e. The rollover contribution account under this Section shall be fully vested at all times, and shall be administered and distributed according to the same terms and conditions of this Plan applicable to other Participant accounts; provided, however, that it may distributed at any time without the occurrence of a distribution event under Section 6.1.

ARTICLE 4.

VESTING

4.1 **Vesting of employee contributions.** A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under Section 3.1 or paid by the employer under Section 3.3.

4.2 **Vesting of employer contributions.** A participating member vests in the employer contributions made on the member's behalf according to the following schedule:

a. Upon completion of two years of service, fifty percent.

b. Upon completion of three years of service, seventy-five percent.

c. Upon completion of four years of service, one hundred percent.

A participating member who was a member or deferred member of the public employees retirement system and who makes an election to participate in this Plan must be credited with years of service accrued under the public employees retirement system on the effective date of participation in this Plan for the purpose of meeting vesting requirements under this Section. Any forfeiture as a result of a participating member to vest in the employer contributions must be used to defray administrative expenses.

4.3 **Reemployment.** If a participating member terminates employment, is paid a distribution from his account, and then becomes reemployed as an eligible employee, years of service completed before termination will not be counted for vesting. Otherwise, for purposes of vesting under the Plan, this Plan does not apply any break in service rule.

ARTICLE 5.

ACCOUNT VALUATION

5.1 **Separate accounts.** A separate bookkeeping account shall be established and maintained under this Plan for each participating member to which shall be credited, at times prescribed by the Board, all employee contributions and all employer contributions.

5.2 **Credits and debits**. Each participating member's account shall be credited or debited from time to time, under rules established by the Board, to reflect investment earnings and administrative expenses.

5.3 **Limited rights to assets.** The fact that separate accounts are established for each participating member shall not give any employee or others any right, title or interest in the Fund or its assets, or in any account except at the time and upon the terms and conditions provided in this Plan.

ARTICLE 6.

DISTRIBUTIONS

6.1 **Distribution eligibility.** A participating member's vested account balance is distributable upon the occurrence of one of the following events:

a. The participating member has terminated employment with the employer. Termination of employment means a severance of employment by not being on the payroll of the employer for a minimum of one month. An approved leave of absence does not constitute termination of employment.

b. The participating member has become totally and permanently disabled according to medical evidence called for under the rules of the Board.

c. The participating member dies.

d. The participating member has reached the Required Beginning Date. In no event shall the distribution a member's account balance commence later than the Required Beginning Date, whether or not they apply for benefits.

ARTICLE 7.

FORM OF DISTRIBUTION

7.1 **Distribution election.** A participating member or his beneficiary who is eligible to receive benefits under Article 6 shall receive benefits upon proper application in a manner approved by the Board as to the date benefit distributions under the Plan will begin. This election must be made consistent with the other distribution requirements of Section 6.1 and this Article 7.

7.2 **Payable benefits.** Benefits under this Article 7 shall be measured by participating member's vested account balance on the date or dates the benefits are payable under this Plan and shall be payable in lump sum or in equal monthly, quarterly, semiannual or annual installments over a period of one or more years.

7.3 **Distribution over life expectancy.** A participating member's form of distribution election under Section 7.2 must be expected to result in the distribution of the member's entire interest in this Plan within a period not exceeding the life of the member or the lives of the member and the member's beneficiary, or over a period not extending beyond the life expectancy of the participating member or the life expectancy of the member and the member's designated beneficiary.

When a participating member dies after distribution of benefits has begun, the remaining portion of the member's interest shall be distributed at least as rapidly as under the method of distribution prior to the participating member's death.

When a participating member dies before distribution of benefits has begun, the entire interest of the member shall be distributed within five years of the member's death. The five year payment rule does not apply to any portion of the member's interest which is payable to a designated beneficiary over the life or life expectancy of the beneficiary and which begins within one year after the date of the participating member's death. The five year payment rule does not apply to any portion of the participating member's interest which is payable to a surviving spouse over the life or life expectancy of the spouse and which begins no later than the date the member would have reached age seventy and one-half.

7.4 **Additional distribution requirements.** In the case of distributions beginning before the death of a participating member, any amounts not distributed before the member's death shall be distributed at times specified by the Secretary of the Treasury which are not later than the time determined under Code Section 401(a)(9)(G), relating to incidental death benefits and at least as rapidly as under the method being used on the date of the participating member's death.

7.5 **Small benefit cashouts.** Notwithstanding any other provision of the Plan to the contrary, the Board shall automatically distribute the benefits of a participating member in a lump sum as soon as administratively feasible after the member becomes eligible for a distribution in accordance with Section 6.1 if the total amount of the participating member's vested account balance and any amounts held in a rollover contribution account established under Section 3.6 is less than or equal to $5,000. A participating member may waive the lump sum cashout if the member submits a written statement to the Board, within sixty days after termination of employment, requesting that the member's account balance remain in the Trust Fund.

7.6 **Death benefit payments.** In the event of the participating member's death prior to receiving payment in full of his benefits under this Plan, the Board shall pay the account balance of the participating member, as of the date the Plan receives an application for benefits from the member's designated beneficiary, directly to the member's designated beneficiary.

7.7 **Direct rollovers.** A Distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement

Plan specified by the Distributee in a Direct Rollover, except that a Distributee may not elect a Direct Rollover of a distribution or series of distributions of less than $200 in a single calendar year. For purposes of applying this Section 7.7, the following definitions shall apply:

a. **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of the balance of a participating member's account to the credit of the Distributee, including any after-tax employee contributions that are not includible in gross income except that an Eligible Rollover Distribution does not include:

1. Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and his designated beneficiary, or for a specified period of ten (10) years or more;

2. Any distribution to the extent such distribution is required under Code Section 401(a)(9);

3. The portion of any distribution that is not includable in a Distributee's gross income (determined without regard to the exclusion for net unrealized unappreciation with respect to Employer securities); or

4. Any corrective distribution of excess contributions and any corrective distribution of excess aggregate contributions and income allowable to such corrective distributions.

An Eligible Rollover Distribution also includes any portion of a distribution that consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code section 408(a) or (b), or to a qualified defined contribution plan described in Code section 401(a) or 403(a) that agrees to separately account for the after-tax employee contribution amounts so transferred.

b. **Eligible Retirement Plan.** An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an annuity plan described in Code Section 408 (b), an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code section 457(e)((1)(A), an annuity contract described in Code section 403(b) or a qualified trust described in Code Section 401(a) that accepts the Distributee's Eligible Rollover Distribution.

c. **Distributee.** A Distributee includes an employee or former employee. In addition, the employee's or former employee's spouse or former spouse are Distributees with regard to the interest of the spouse or former spouse.

d. **Direct Rollover.** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

7.8 **Benefits payable to alternate payee under qualified domestic relations order.**

a. The Board shall pay retirement benefits in accordance with the applicable requirements of any qualified domestic relations order. The Board shall review a domestic relations order submitted to it to determine if the domestic relations order is qualified under this Section 7.8 and under rules established by the Board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders. Upon determination that a domestic relations order is qualified, the Board shall notify the participating member and the named alternate payee of its receipt of the qualified domestic relations order.

b. A “qualified domestic relations order” for purposes of this Section 7.8 means any judgment, decree or order, including approval of a property settlement, which relates to a provision of child support, spousal support or marital property rights to a spouse, former spouse, child or other dependent of a participating member, is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a part of the benefits payable to the participating member. A qualified domestic relations order may not require the Board to provide any type of benefit, or any option, not otherwise provided under this Plan, or to provide increased benefits as determined on the basis of actuarial value. However, payment of benefits to the alternate payee under a qualified domestic relations order shall be made as soon as administratively feasible after the order is determined to be qualified, notwithstanding that the participating member has not terminated eligible employment. A qualified domestic relations order must be in a form as may be required by the Board.

7.9 **Benefit limitations.** Contributions with respect to a member of this Plan may not exceed the maximum annual amounts specified under Code Section 415 for governmental plans.

a. The annual addition to a participating member’s account for any calendar year shall not exceed the lesser of:

1. $40,000, as adjusted for increases in the cost-of-living under Code section 415(d); or

2. 100% of the compensation or wages paid or made available to the participating member in such year.

b. The “annual addition” shall mean the sum allocated to a participating member’s account for any year of contributions or forfeitures, if any, pursuant to this Plan and allocated to the member’s benefit pursuant to all other defined contribution plans maintained by the employer for the calendar year, including employee contributions.

The annual addition shall not include the allocation of investment income to a participating member’s account balance pursuant to Section 5.2.

c. “Compensation” for purposes of this Section 7.9 shall mean compensation as defined under Code Section 415(c)(3), including salary reduction amounts under Code Sections 125, 457 and 403(b).

d. The Board shall reallocate the excess of a participating member’s annual addition over the limits stated above to the accounts of the participating members in the Plan who have not exceeded the limits stated above. If the reallocation causes the limits stated above to be exceeded with respect to each participant for the calendar year, then these amounts shall be held unallocated in a suspense account and reallocated to participants’ accounts in the next (or succeeding, if necessary) calendar year before the allocation of employer or employee contributions.

If the Plan terminates before the allocation of such excess, the excess shall revert to the employer, to the extent that it may not be allocated to any participant’s account.

ARTICLE 8.

ESTABLISHMENT AND ADMINISTRATION OF THE TRUST

8.1 **Establishment of trust.** There is hereby established a Trust Fund to be known as the North Dakota Defined Contribution Retirement Fund. This Trust Fund is intended to be a tax-exempt trust under Code Sections 401 and 501. The assets of this Plan, and all income attributable to such assets, are held in trust by the Board for the exclusive benefit of participating members and their beneficiaries.

8.2 **Acceptance of trust.** The Board consents to act as Trustee for this Trust Fund.

8.3 **Administration.** The Board shall supervise the operation of the Plan, maintain records and supply information to participating members and others. In administering this Plan, the Board shall have any applicable rights, powers and duties granted to it by law for the administration of the public employees retirement system.

8.4 **Specific powers and duties.** The Board shall:

a. Exercise exclusive authority to invest and manage assets of the Plan. However, the Board shall permit each participating member to direct the investment of the individual's employer and employee contributions and earnings to one or more investment options within available categories of investment as established by the Board.

b. Establish and adopt a statement of investment objectives and policies setting forth the manner and parameters of the investment of the assets of the Plan. The statement of investment objectives and policies shall be established in a manner consistent with the purposes of the Plan. The Board shall monitor the performance of the investments of the Plan to ensure such remain consistent with the investment policy established by the Board.

c. Provide information to employees who are eligible to elect to become participating members in this Plan. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system and this Plan. Notwithstanding any other provision of law, the Board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this Plan.

d. Establish an administrative budget sufficient to perform the duties under the Plan and to draw upon authorized sources to fund the budget.

e. Pay Plan benefits and related taxes from the assets of the Plan.

f. Obtain by employment or contract all the services necessary or appropriate to administer the Plan, including actuarial, auditing, custodial, investment, legal and record keeping services.

g. Procure and dispose of the goods and property of the Plan necessary for its proper administration.

h. Have full power and authority to adopt rules and regulations for the administration of the Plan and to interpret, alter, amend or revoke any rules and regulations so adopted.

8.5 **Expenses.** The expenses incurred by the Board in the proper administration of the Plan shall be paid from sources made available under applicable state law, including the Trust Fund.

8.6 **Accounting.** For accounting purposes, the Board will maintain a summary of the account balances of each participating member whose benefits have not begun to be distributed. This accounting summary will reflect from time to time the total deferred liability of the Plan as well as the account balance for each participating member in the Plan.

8.7 **Compliance authority.** The Board may administratively alter the terms of the Plan as it determines to be necessary or appropriate to maintain the status of the Plan as a qualified defined contribution retirement plan under the Code.

8.8 **Delegation of responsibilities.** The Board may delegate the duties and authorities established under the Plan in a manner consistent with its fiduciary responsibilities as established under this Article 8.

8.9 **Fiduciary responsibilities.** The Board, the Administrator, and any agent or designee thereof with discretionary authority for the Plan, are fiduciaries under the Plan as to the discharge of their duties under the Plan and shall act as to their duties:

a. Solely in the interest of the Plan's participating members and their beneficiaries;

b. For the exclusive purpose of providing benefits to participating members and their beneficiaries and paying reasonable expenses of administering the Plan;

c. With the care, skill, prudence and diligence under the circumstances then prevailing that a person acting a like capacity and familiar with such matters would use in the conduct of an activity of like character and purpose;

d. Incurring only costs that are appropriate and reasonable; and

e. In accordance with good faith interpretation of the law governing the Plan.

ARTICLE 9.

RIGHT OF APPEAL AND DETERMINATION OF DISPUTES

9.1 **Claim to benefits.** No participating member, beneficiary or other person shall have any right or claim to benefits under this Plan, or any right or claim to payment from the Trust Fund, other than as specified herein and under all applicable sections of North Dakota Century Code Chapter 54-52. Any dispute as to eligibility, type, amount or duration of benefits or any right or claim to payment from the Trust Fund shall be resolved pursuant to the terms of the Plan, under appeal procedures adopted by the Board.

ARTICLE 10.

AMENDMENT AND TERMINATION

10.1 **Right to amend plan.** The Board has the right to amend the Plan, in whole or in part, at any time and from time to time. However, no amendment shall, with respect to any participating member, reduce such benefits provided hereunder as are derived from vested contributions credited to the participating member before the effective date of any such amendment.

10.2 **Exclusive benefit.** Except as permitted specifically by law, it shall be impossible by operation of this Plan, by termination or amendment or by the happening of any contingency, for any part of the principle or income of the Trust Fund or any fund contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of participating members or their beneficiaries.

10.3 **Severability.** If any provision of the Plan or any step in the administration of the Plan is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of the Plan, unless such illegality or invalidity prevents accomplishment of the purposes and objectives of the Plan. In the event of any such holding, the Board will immediately amend the Plan to remedy the defect.

10.4 **Nonforfeitable benefits upon termination.** In the event of a termination of the Plan, the rights of each participating member to all benefits accrued to date of such termination, which is the vested account balance of each participating member, shall be one hundred percent nonforfeitable and fully vested in each participating member.

ARTICLE 11.

GENERAL PROVISIONS

11.1 **Plan not employment contract.** The adoption of or participation in this Plan may not be deemed to give an employee the right to be retained in the employ of an employer or to interfere with the right of the employer to discharge any employee at any time.

11.2 **Alienation of benefits prohibited.** Neither the participating member nor his designated beneficiary, or any other designee, has any right to commute, sell, assign, transfer or otherwise convey the right to receive any payments or assets under this Plan. Such payments or assets are non-assignable and non-transferable. The participating member's rights under the Plan are not subject to the rights of creditors of the participating member, any beneficiary, the Board or the employer and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third persons. This Section shall not apply to a qualified domestic relations order, as defined in Section 7.8.

11.3 **Beneficiary designation.** A participant or former participant in the Plan may nominate one or more individuals as a beneficiary by filing written notice of nomination with the Board. If the participating member or former member is married at the time of the nomination and the participant's spouse is not the beneficiary for one hundred percent of his account balance, the nomination is not effective unless it is signed by the participant's spouse. However, the Board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

11.4 **Overpayments.** The Board has the right of setoff to recover overpayments made under this Plan and to satisfy any claims arising from embezzlement or fraud committed by a participating member, deferred member, beneficiary or other person who has a claim to a distribution or any other benefit from this Plan.

11.5 **Plan qualification.** If the Board receives notice from the Internal Revenue Service that this Plan is not qualified for tax purposes under the Code, then the portion that will cause the disqualification does not apply.

11.6 **Construction**. The laws of the state of North Dakota, as amended from time to time, shall govern the construction and application of this Plan. Words used in the masculine gender shall include the feminine and words in the singular shall include the plural, as appropriate. The headings and subheadings of this Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.